

# **DSENATE NO. 1975**

## **AN ACT** PROMOTING CONSUMER CHOICE AND COMPETITION FOR CABLE SERVICE.

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1 SECTION 1. New Chapter 166B; State-issued Cable Franchising.

2 State-issued Cable Franchising and Regulation

3 1. Findings.

4 Whereas Massachusetts' consumers benefit from expanded choice and competition for  
5 cable television services, and

6 Whereas, competition in the provisioning of cable service is emerging with the  
7 convergence of preexisting and new technologies for providing voice, video and data services,  
8 which results in increased investment in the state, lower prices, increased consumer choice and  
9 improved service offerings for consumers, and

10 Whereas, increased investment and the potential for competition in the cable service  
11 market through the provisioning of new communications services and deployment of advanced  
12 communications infrastructure, including fiber optic technologies, further enhances economic  
13 opportunities, smart growth, the delivery of health care services, improved public safety,  
14 education and human services and the overall health and well being of the residents of the  
15 Commonwealth, and

16           Whereas, state-issued franchises for the provision of cable service will promote and  
17   facilitate the deployment of advanced technologies and new services to all classes of  
18   communities and protect Massachusetts’ ability to compete in the national and international  
19   marketplace for industry and jobs, and

20           Whereas, modifying existing cable service regulation through the enactment of new  
21   standards and procedures that provide consumers with expedited access to a competitive  
22   facilities-based cable market is warranted in this state, and

23           Whereas, current cable franchise requirements in the Commonwealth have acted as a  
24   barrier to entry to new facilities-based cable operators and have delayed the development of  
25   viable competition in the cable market,

26           The General Court finds that a standardized franchising process that speeds innovation,  
27   technology deployment, and competition while sustaining local programming via public,  
28   education and government channels through a single, predictable set of consumer-supported  
29   fees is in the public interest.

30   2. Definitions.

31           The following words and phrases when used in this chapter shall have the meanings  
32   given to them in this section unless the context clearly indicates otherwise:

33           “Cable operator.” Any person or group of persons (A) who provides cable service over  
34   a cable system and directly or through one or more affiliates owns a significant interest in such  
35   cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the  
36   management and operation of such a cable system, as set forth in 47 U.S.C. §522(5).

37           “Cable service.” The one-way transmission to subscribers of video programming; or  
38 other programming service, and subscriber interaction, if any, which is required for the selection  
39 or use of such video programming or other programming service, as set forth in 47 U.S.C.  
40 Section 522(6). This definition does not include any video programming provided by a  
41 commercial mobile service provider as defined in 47 U.S.C. §332(d).

42           “Cable system.” Any facility, consisting of a set of closed transmission paths and  
43 associated signal generation, reception and control equipment that is designed to provide cable  
44 service which includes video programming and which is provided to multiple subscribers within  
45 a community, as set forth in 47 U.S.C. §522(7), but such term does not include:

46           (1) A facility that serves only to retransmit the television signals of one or more  
47 television broadcast stations;

48           (2) A facility that serves subscribers without using any public right-of-way;

49           (3) A facility of a common carrier which is subject, in whole or in part, to the  
50 provisions of Title II of the Communications Act of 1934, 47 U.S.C. §201 et seq., except  
51 that such facility shall be considered a cable system (other than for purposes of 47  
52 U.S.C. §541(c)) to the extent such facility is used in the transmission of video  
53 programming directly to subscribers, unless the extent of such use is solely to provide  
54 interactive on-demand services;

55           (4) An open video system that complies with 47 U.S.C. §573; or

56           (5) Any facilities of any electric utility used solely for operating its electric utility  
57 system.

58           “Division.” The Division of Community Antenna Television, established in the  
59 Department of Telecommunications and Energy or any successor agency.

60           “Franchise.” An initial authorization, or renewal of an authorization, issued by a  
61 franchising authority, regardless of whether the authorization is designated as a franchise,  
62 permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the  
63 construction and operation of a cable system in the public rights-of-way.

64           “Franchise holder” or “holder.” A person who has received a state-issued franchise, but  
65 has not transferred or terminated such franchise authorization, in accordance with the provisions  
66 of this chapter.

67           “Franchising authority.” The Division and municipalities which are entitled to require  
68 franchises and impose fees in accordance with 47 U.S.C. §§522(10) and 542, respectively.

69           “Gross revenues.” (1) All revenue actually received by the franchise holder, as  
70 determined in accordance with generally accepted accounting principles, which is derived from  
71 the operation of the franchise holder’s cable system to provide cable service within the  
72 jurisdictional boundaries of the municipality, including:

73           (a) all charges billed to subscribers for any and all cable services provided by the  
74 franchise holder;

75           (b) compensation received by the franchise holder that is derived from the operation of  
76 the holder’s cable system to provide cable service with respect to commissions that are paid  
77 to the holder as compensation for promotion or exhibition of any products or services on  
78 the holder’s cable system, subject to subsection (2)(d) of this definition.

79           (c) a pro rata portion of all revenue derived by the franchise holder or its affiliates  
80 pursuant to compensation arrangements for advertising derived from the operation of the  
81 holder’s cable system to provide cable service within the jurisdictional boundaries of the  
82 municipality, subject to subsection (2)(a) of this definition. The allocation shall be based on

the number of subscribers in the municipality divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in gross revenue.

(2) For purposes of this section, “gross revenues” does not include:

(a) amounts not actually received, even if billed, such as bad debt; refunds, rebates or promotional discounts to subscribers or other third parties;

(b) revenues received by any affiliate of a franchise holder or any other person in exchange for supplying goods or services used by the franchise holder to provide cable service;

(c) revenues derived from services classified as non-cable service under federal law including without limitation revenue received from telecommunications services and information services; and any other revenues attributed by the franchise holder to non-cable service in accordance with Federal Communications Commission or Division rules, regulations, standards or orders;

(d) revenues paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the cable service, but not excluding any commissions that are paid to the franchise holder as compensation for promotion or exhibition of any products or services on the holder's cable system, such as a home shopping or a similar channel;

(e) revenues from the sale of cable service for resale in which the reseller is required to collect a fee similar to the franchise fee from the reseller's customer;

(f) amounts billed to and collected from subscribers to recover any tax, fee, or surcharge imposed by any governmental entity upon the franchise holder or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the holder and remitted to the taxing entity (including, but not limited to, fees payable to the commonwealth or municipalities due under this chapter, sales and use tax, gross receipts tax, excise tax, utility users tax, public utilities service or assessment fee, communications tax, and any other fee not imposed by this chapter);

(g) revenues from the sale of capital assets or surplus equipment that is not used by the purchaser to receive cable service from the seller of such assets or surplus equipment;

(h) revenues from directory or Internet advertising revenue including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing;

(i) revenues received as reimbursement by programmers of marketing costs incurred by the franchise holder for the introduction of new programming; and

(j) security deposits received from subscribers, excluding security deposits applied to the outstanding balance of a subscriber's account and thereby taken into revenue.

“Incumbent cable operator.” The cable operator serving the largest number of cable subscribers in a particular municipal franchise area on the effective date of this chapter.

“Municipality.” A city or town within the Commonwealth.

“Person.” An individual, partnership, association, joint stock company, trust, corporation, government entity, limited liability company or any other entity.

127           “Public right-of-way.” The area on, below or above a public roadway, highway, street,  
128 public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

129           “Video programming.” Programming provided by, or generally considered comparable  
130 to, programming provided by a television broadcast station, as set forth in 47 U.S.C. Section  
131 522(20).

132       2. Authorization to provide cable service.

133           A.     General rule. Notwithstanding any other law to the contrary and subject to  
134 subsection B of this section, a person seeking to provide cable service in the Commonwealth of  
135 Massachusetts after the effective date of this chapter shall file an application for a state-issued  
136 franchise with the Division as required by this section.

137           B.     Grandfather provision. A person, including an incumbent cable operator,  
138 providing cable service under a franchise agreement with a franchising authority which existed  
139 prior to the effective date of this chapter is not subject to this section until the franchise  
140 agreement expires at the end of its original or any mutually agreeable renewal term, or unless  
141 and until the franchising authority and entity providing cable service mutually agree to  
142 terminate the existing franchise agreement.

143           C.     Restrictions. Nothing in this section shall restrict a cable operator from applying  
144 to the Division for a state-issued franchise to provision cable services in territories of the state  
145 for which it does not have an existing franchise agreement with a franchising authority. For  
146 purposes of this section, a cable operator will be deemed to have a franchise to provide cable  
147 service in the jurisdiction of a specific franchising authority if any affiliate, predecessor or  
148 successor entity of the cable operator maintains a franchise granted by that franchising  
149 authority. The terms “affiliate, predecessor or successor entity” in this section shall include but

150 not be limited to any entity receiving, obtaining or operating under a franchise from a  
151 franchising entity for cable service through the grant of a franchise, merger, sale, assignment,  
152 restructuring, or any other type of transaction.

153 3. Division responsibilities.

154       A.     Franchising authority. The Division shall have the sole franchising authority for  
155 the provisioning of cable service under this chapter. Neither the Division nor any municipality  
156 in the state may require the franchise holder to obtain any separate or additional franchise or  
157 otherwise impose any fee or other requirement, including but not limited to the regulation of  
158 cable service rates, on any franchise holder as a condition of providing cable service, except as  
159 provided in this chapter. The Division may delegate its authority to issue a state-issued  
160 franchise to its staff or a member thereof.

161       B.     General rule. The Division shall assign existing permanent staff of such legal,  
162 technical and other employees of the Division as may be required for the proper conduct of its  
163 cable franchising responsibilities under this chapter. The powers and duties of the Division with  
164 respect to state-issued franchise shall not exceed those prescribed in subsection C of this  
165 section.

166       C.     Powers and duties. The Division's administrative powers and duties shall be limited  
167 to the:

- 168               (1) Review of the initial submission and any updates for completeness;
- 169               (2) Determination and notice of incomplete applications;
- 170               (3) Approval of applications and amended applications and issuance of state-
- 171 issued franchises, or denial of such applications, within the periods designated under the
- 172 provisions of this chapter;



(4) Issuance to applicants whose applications are approved of state-issued franchises to provide cable service in the service area footprint described in the application; to construct, upgrade, operate or maintain a network capable of providing such service, and to use and occupy the public rights-of-way in the delivery of that service;

4. Application for state-issued franchise.

A. General rule. Any person desiring to provide cable service in the Commonwealth after the effective date of this chapter shall file an application for a franchise with the Division as required by this section. The applicant for a state-issued franchise shall provide notice of the filing and of any subsequent amendments to all municipalities in which it will provide cable service.

B. Contents of application. Applications for a state-issued franchise shall contain and be limited to:

(1) A statement that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable service in this state;

(2) A statement that the applicant agrees to comply with all other applicable federal, state statutes and regulations and all generally applicable municipal ordinances and regulations, including without limitation municipal ordinances and regulations regarding the time, place and manner of using and occupying public rights-of-way adopted in accordance with state and federal law;

(3) A general identification of the service area for which authority is sought, such as a statement that service will be provided within the whole or portion one or

196 more specified municipalities. The service area identification shall be updated by the  
197 applicant prior to the expansion of cable service to a previously undesignated service  
198 area and, upon such expansion, written notice shall be given to the Division of the new  
199 service area to be served by the applicant. The state-issued franchise area and any  
200 service area within the franchise area may extend beyond the area or areas where the  
201 applicant has pre-existing authority to occupy the public rights-of-way. The Division  
202 shall determine the length of time and percentage of a municipality included in the  
203 service area, up to the entire municipality, that shall be provided service.

204 (4) The location of the applicant's principal place of business, the names of the  
205 applicant's principal executive officers, and the name, address and telephone number  
206 of an officer, general partner or other employee of the applicant who will be  
207 responsible for ongoing communications with the Division;

208 (5) The name and location of the principal place of business of the applicant's  
209 parent company, if any; and

210 (6) The signature of an officer or general partner of the applicant verifying the  
211 information set forth in the application.

212 C. Notification. Within 10 business days after it receives the application, the Division  
213 shall (1) determine whether an application submitted pursuant to subsection B of this section is  
214 incomplete, and (2) if so, the Division shall notify the applicant that the application is  
215 incomplete and identify the information that the Division must receive from the applicant to  
216 make the application complete.

217 D. Application decision. Within 15 business days after it receives the completed  
218 application, the Division shall approve the application and issue a franchise to the applicant, or

219 deny the application. The Division may deny the application only if the applicant has failed to  
220 state in the application the information and representations required by subsection B of this  
221 section. If the Division denies the application, it must specify with particularity the reason or  
222 reasons for the denial, and the applicant may amend its application to cure any deficiency. The  
223 Division shall decide such amended application within 5 business days of its submission to the  
224 Division by the applicant. An applicant may challenge a denial of its application or amended  
225 application in any court of competent jurisdiction. If the Division fails to approve or deny an  
226 application or amended within the applicable time period set forth in this subsection, then the  
227 application or amended application shall be deemed approved by the Division and the franchise  
228 shall be deemed to have been issued to the applicant.

229 E. Contents of state-issued franchise. A franchise authorization shall contain:

230 (1) A grant of a franchise to provide cable service in the service area footprint  
231 described in the application; to construct, upgrade, operate or maintain a network  
232 capable of providing such service, except where this grant is not required under  
233 subsection F of this section; and to use and occupy the public rights-of-way in the  
234 delivery of that service; and

235 (2) A statement that the franchise grant in subsection (1) is subject to lawful  
236 operation of the cable service by the applicant or its successor in interest.

237 F. Pre-existing authority. An applicant having pre-existing authority to utilize the  
238 public rights-of-way is required to obtain a state-issued franchise prior to the actual provision of  
239 cable service on a commercial basis directly to subscribers. However, such an applicant is not  
240 required to obtain a state-issued franchise or any municipality authorization, except for being  
241 subject to generally applicable municipality right-of-way requirements governing street

242 openings, traffic control and the like, in order to construct, upgrade, operate or maintain a  
243 network that is capable of providing cable service.

244           G. Transferability. The franchise authorization issued by the Division is fully  
245 transferable to any successor in interest to the applicant to which it is initially granted without  
246 the approval or consent of the Division or any municipality. The applicant or its successor in  
247 interest shall file a written notice of such transfer with the Division and the relevant  
248 municipality or entities within 14 business days after the completion of the transfer. This notice  
249 shall include a certification that the successor in interest agrees to be bound by the terms of the  
250 franchise authorization and is legally, technically and financially qualified to operate the cable  
251 system.

252           H. Termination. The franchise authorization issued by the Division may be terminated  
253 by the cable operator by submitting written notice of such termination to the Division and any  
254 affected municipality.

255           I. Fees. The Division may charge a fee for filing an application under this section. Any  
256 fee charged by the Division under this subsection shall not exceed the actual costs to process  
257 and review the application.

258 5. Access to public rights-of-way.

259           A. General rule. Municipalities shall allow the franchise holder under this chapter to  
260 install, construct, upgrade, operate and maintain a cable system within public rights-of-way  
261 within the jurisdiction of the municipality under the same terms and conditions as applicable to  
262 public utility corporations under applicable state and federal law.

263           B. Nondiscrimination. No municipality shall discriminate against the franchise holder  
264 regarding the authorization or placement of a communications network in public rights-of-way,

265 access to a building or a utility pole attachment term. All municipality right-of-way  
266 requirements applicable to cable operators must be competitively neutral, reasonable and  
267 nondiscriminatory.

268 C. Construction permits and licenses. In the exercise of its lawful regulatory authority,  
269 municipalities shall promptly process all valid and administratively complete applications of the  
270 franchise holder for a permit or license, to excavate, set poles, locate lines, construct facilities,  
271 make repairs, affect traffic flow, or other similar approvals. The municipality shall make every  
272 reasonable effort not to delay or unduly burden the holder in the timely conduct of the holder's  
273 business.

274 D. Expedited response or repair. In the event of fire, flooding, accident or other exigent  
275 circumstances necessitating immediate response work or repair by the franchise holder, the  
276 holder may begin the response work or repair or take any action required under the  
277 circumstances without prior approval from the affected municipality, provided, however, that  
278 the holder notifies the municipality as promptly as reasonably possible after beginning the work  
279 and subsequently obtains any approval required by a municipal ordinance applicable to  
280 expedited response or repair work.

281 E. Indemnity in connection with public rights-of-way. The franchise holder shall  
282 indemnify and hold a municipality and its officers and employees harmless against any and all  
283 claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's  
284 fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of  
285 any kind and nature, including personal or bodily injury (including death), property damage, or  
286 other harm for which recovery of damages is sought, that is found by a court of competent  
287 jurisdiction to be caused solely by the negligent act, error, or omission of the holder or any

288 agent, officer, director, representative, employee, affiliate, or subcontractor of the holder or  
289 their respective officers, agents, employees, directors, or representatives, while installing,  
290 repairing, or maintaining facilities in a municipality public right-of-way. The indemnity  
291 provided by this subsection does not apply to any liability resulting from the negligence of the  
292 municipality or its officers, employees, contractors, or subcontractors. If the franchise holder  
293 and the municipality are found jointly liable by a court of competent jurisdiction, liability shall  
294 be apportioned comparatively in accordance with the laws of this state without, however,  
295 waiving any governmental immunity available to the municipality under state law and without  
296 waiving any defenses of the parties under state law. This subsection is solely for the benefit of  
297 the municipality and the franchise holder and does not create or grant any rights, contractual or  
298 otherwise, for or to any other person or entity.

299 F. Written notice. The franchise holder and a municipality shall promptly advise the  
300 other in writing of any known claim or demand against the holder or the municipality related to  
301 or arising out of the holder's activities in a public right-of-way.

302 G. The Division shall have no jurisdiction to review regulations and ordinances adopted  
303 by a municipality to manage public rights-of-way.

304 6. Municipal regulation of franchise holders.

305 A. Municipal powers regarding franchise holders. A municipality may:

306 (1) Exercise its nondiscriminatory police power with respect to its public rights-  
307 of-way and a franchise holder's use thereof;

308 (2) Receive and address cable service quality complaints from a franchise  
309 holder's customers within the municipality;

(3) Require a franchise holder who is providing cable service within the municipality to register with the municipality, maintain a point of contact, and provide notice of any franchise authorization transfer to the municipality within 14 business days after the completion of the transfer;

(4) Establish reasonable guidelines regarding the use of public, educational, and governmental access channels within the municipality.

B. Limitation of municipal authority over franchise holders. No municipality shall impose on activities of the franchise holder any requirement:

(1) That particular business offices of the holder be located within the territory of the municipality;

(2) That reports or other documents which are not required by federal or state law and which are not related to the holder's use of the public rights-of-way be filed by the holder with the municipality;

(3) That the holder provide information to the municipality concerning the capacity or other operational characteristics of the holder's cable system or communications network facilities;

(4) That the holder's business records be subject to inspection by the municipality, except to extent permitted under section 7 of this chapter;

(5) That transfers of ownership or control of the holder's business be approved by the municipality, except that a municipality may require that the holder maintain a current point of contact with the municipality and that the holder or its successor-in-interest to provide notice of a transfer to the municipality within 14 business days after the completion of the transfer;

(6) That the holder which is self-insured under the applicable provisions of state law obtain insurance or bonding for any activities within the territory of the municipality, except that a self-insured holder shall provide substantially the same claims processing as an insured provider. A bond shall not be required from a holder for any work consisting of aerial construction except that a reasonable bond may be required of a holder that cannot demonstrate a record of at least four years' performance of work in any municipality's public rights-of-way free of currently unsatisfied claims by the municipality for damage to the public rights-of-way;

(7) That the holder provide the municipality with an indemnification in connection with public rights-of-way that is broader than the indemnification required in section 5 of this chapter; or

(8) That the holder build out its cable system to areas of the municipality not included in the holder's service area footprint designated pursuant to Section 4(B) of this chapter or comply with any other mandatory build-out provisions.

## 7. Payment and remittance of franchise fee.

A. General rule. The franchise holder who offers cable service within the jurisdiction of a municipality shall calculate and remit to the commonwealth and municipality at the end of each calendar year quarter a franchise fee, as provided in this section. The obligation to calculate and remit the franchise fee to the commonwealth and a municipality begins immediately upon provision of cable service within that municipality's jurisdiction, but the first remittance shall not be due until the end of the first calendar year quarter that is later than 180 days after the provision of cable service began.



355           B. Calculation of franchise fee. The franchise holder shall pay a franchise fee not to  
356 exceed in total 5% percent of the holder's gross revenues, as defined in Section 1 of this  
357 chapter, as follows: (i) eighty cents per subscriber served payable to the commonwealth; (ii)  
358 fifty cents per subscriber served payable to a municipality in which the holder provides cable  
359 service; and (iii) a percentage of the franchise holder's gross revenues payable to a municipality  
360 in which the holder provides cable service which the municipality establishes by ordinance.

361           C. Documentation. No fee under this section will become due until the municipality  
362 certifies and provides documentation to the franchise holder supporting the percentage paid by  
363 any incumbent cable operator serving the area within the municipality's jurisdiction.

364           D. Restrictions. No municipality or any other political subdivision of this state may  
365 assess any additional fees or charges or require other remuneration of any kind from the  
366 franchise holder other than as set forth in this section.

367           E. Application to bundled services. For purposes of this section, in the case of a cable  
368 service that may be bundled or integrated functionally with other services, capabilities or  
369 applications, the franchise fee shall be applied only to the gross revenues, as defined in this  
370 chapter, attributable to cable service, as reflected on the books and records of the holder in  
371 accordance with generally accepted accounting principles and Federal Communications  
372 Commission rules, regulations, standards or orders, as applicable.

373           F. Remittance and review of franchise fee. The franchise fee shall be remitted to the  
374 commonwealth and applicable municipality quarterly, within 45 days after the end of the  
375 quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary  
376 explaining the basis for the calculation of the franchise fee. Not more than once annually, the  
377 commonwealth and a municipality may examine the franchise holder's business records to the

378 extent reasonably necessary to ensure compensation in accordance with this section. Each party  
379 shall bear the party's own costs of the examination. Any claims by the commonwealth or a  
380 municipality that compensation is not in accordance with this section, and any claims for  
381 refunds or other corrections to the remittance of the franchise holder, must be made within three  
382 years and 45 days of the end of the quarter for which compensation is remitted, or three years  
383 from the date of remittance, whichever is later. Either the commonwealth, a municipality or the  
384 franchise holder may, in the event of a dispute concerning compensation under this section,  
385 bring an action in a court of competent jurisdiction.

386 G. The franchise holder may identify the municipality and bill and collect the amount of  
387 the franchise fee and any PEG access support under section 8 as separate prorated line items on  
388 the regular bill of each subscriber.

389 8. Public, educational and government access channels.

390 A. General rule. The franchise holder shall provide the municipality with capacity in its  
391 cable system to allow public, educational, and governmental (PEG) access channels for  
392 noncommercial programming.

393 B. Provisioning of access channels. The franchise holder shall designate a sufficient  
394 amount of capacity on its cable system to allow the provision of a comparable number of PEG  
395 access channels or hours of programming that the incumbent cable operator has activated and  
396 provided within the municipality under the terms of its franchise agreement as of the effective  
397 date of this chapter. If a municipality did not have PEG access channels as of that date, the  
398 franchise holder shall furnish to the municipality upon request up to three PEG access channels  
399 for a municipality with a population of at least 50,000 and up to two PEG access channels for a  
400 municipality with a population of less than 50,000. For the purposes of this section, a PEG

401 access channel is deemed to be and remain activated if it is being utilized for PEG programming  
402 within the municipality for at least 8 hours per day and if such programming is not broadcast  
403 more than once in every 8 hours. The franchise holder shall have 12 months from the date the  
404 municipality requests such PEG access channels to designate the PEG access channel capacity;  
405 provided, however, that the 12-month period shall be tolled by any period during which the  
406 designation or provision of PEG access channel capacity is technically infeasible, including any  
407 failure or delay of the incumbent cable operator to make adequate interconnection available, as  
408 required by this section.

409 C. PEG support. The franchise holder shall provide funding to a municipality in which  
410 it provides cable service to be used to support the operations of PEG access programming. If  
411 PEG access support is provided to a municipality by an incumbent cable provider under a  
412 franchise agreement, the state-issued franchise holder shall pay, while the incumbent agreement  
413 is in effect, the same amount on a per subscriber basis as the incumbent cable provider pays on a  
414 per-subscriber basis to the municipality for on-going PEG support. When the incumbent cable  
415 provider's franchise agreement expires or if there is no incumbent cable provider in a  
416 municipality, PEG support by a franchise holder shall be set by ordinance but shall not exceed  
417 one (1) percent of a franchise holder's gross revenues for cable service provided within the  
418 municipality.

419 D. Remittance of PEG support. The PEG support shall be remitted to the applicable  
420 municipality quarterly, within 45 days after the end of the quarter for the preceding calendar  
421 quarter. Each payment shall be accompanied by a summary explaining the basis for the  
422 calculation of the franchise fee. Not more than once annually, a municipality may examine the  
423 franchise holder's business records to the extent reasonably necessary to ensure compensation

424 in accordance with this section. Each party shall bear the party's own costs of the examination.  
425 Any claims by a municipality that compensation is not in accordance with this section, and any  
426 claims for refunds or other corrections to the remittance of the franchise holder, must be made  
427 within three years and 45 days of the end of the quarter for which compensation is remitted, or  
428 three years from the date of remittance, whichever is later. Either a municipality or the  
429 franchise holder may, in the event of a dispute concerning compensation under this section,  
430 bring an action in a court of competent jurisdiction.

431 C. Termination. The franchise holder may cease providing any PEG access channel  
432 provided pursuant to this section that is not utilized by the municipality for at least 8 hours per  
433 day, and except as provided herein, the access channel may thereafter be programmed at the  
434 franchise holder's discretion. If the municipality subsequently certifies to the holder a schedule  
435 for at least 8 hours of daily non-repeat PEG access channel programming per channel, the  
436 holder shall restore the PEG access channel(s) for the use of the municipality for as long as the  
437 municipality uses the channel(s) for at least 8 hours a day.

438 D. Channel responsibility. The content and operation of any PEG access channel  
439 provided pursuant to this section shall be the responsibility of the municipality, receiving the  
440 benefit of such channel, and the franchise holder bears only the responsibility for the  
441 transmission of such channel, subject to technological constraints. The franchise holder shall be  
442 responsible for providing the connectivity to each PEG access channel programming  
443 distribution location and for doing so without charge for up to the first 200 feet of the holder's  
444 connecting facilities.

445 E. Transmission of programming. The municipality must ensure that all transmissions,  
446 content, or programming to be transmitted over a PEG access channel or facility by a franchise

447 holder are provided or submitted to the franchise holder in a manner or form that is capable of  
448 being accepted and transmitted by the franchise holder, without requirement for additional  
449 alteration or change in the content by the franchise holder, over the franchise holder's cable  
450 system. The municipality's provision of PEG content to the holder shall constitute authorization  
451 for the holder to carry such content including, at the holder's option, beyond the jurisdictional  
452 boundaries of the municipality.

453 F. Municipal Service. A franchise holder shall provide and maintain, without charge,  
454 one service outlet activated for basic service to any and all fire stations, public schools, police  
455 stations, public libraries, and other such buildings used for municipal purposes located in its  
456 service area.

457 G. Emergency Alert System: A franchise holder shall comply with the Emergency  
458 Alert System ("EAS") requirements of the FCC in order that emergency messages may be  
459 distributed over the Cable System.

460 H. Interconnection. Each franchise holder and incumbent cable operator shall use  
461 reasonable efforts to interconnect their cable systems for the purpose of providing PEG access  
462 channel programming. Interconnection may be accomplished by direct cable, microwave link,  
463 satellite, or other reasonable method of connection. Franchise holders and incumbent cable  
464 operators shall negotiate in good faith and incumbent cable operators may not withhold  
465 interconnection of PEG channels. In the event a franchise holder and an incumbent cable  
466 operator cannot reach a mutually acceptable interconnection agreement, then the duty of the  
467 holder shall be discharged if the holder makes interconnection available to the channel  
468 originator at a point on the holder's network, as determined by the holder, which is within the  
469 relevant municipality.

470 I. Identifying brands. A franchise holder shall not be required to interconnect for, or  
471 otherwise to transmit, PEG content that is branded with the logo, name or other identifying  
472 marks of another cable operator. The municipality may require a cable operator to remove its  
473 logo, name, or other identifying marks from PEG content that is to be made available through  
474 interconnection to another provider of PEG access channel capacity.

475

476 J. Enforcement. A court of competent jurisdiction shall have jurisdiction to enforce any  
477 requirement under this section or resolve any dispute regarding the requirements set forth in this  
478 section, and no cable operator may be barred from the provision of cable service or be required  
479 to terminate cable service as a result of such dispute or enforcement action.

480 9. Discrimination in the provisioning of service prohibited.

481 A. General rule. A cable operator that has been granted a state-issued franchise under  
482 this chapter shall not deny access to cable service to any group of potential residential  
483 subscribers because of the income of the residents in the local area in which such group resides.

484 B. Determination of violations.--For purposes of determining whether a franchise  
485 holder has violated subsection (A), cost, low household density, distance and technological,  
486 network architecture, or commercial impracticability limitations must be taken into account and  
487 the franchise holder shall have a reasonable time to deploy its service. Use of alternative  
488 technologies that provide comparable content, service and functionality shall not be considered  
489 a violation of this section. The inability to serve a potential residential subscriber because a  
490 franchise holder is prohibited from placing its own facilities in a building or property shall not  
491 be found to be a violation of this section. This section may not be construed as authorizing any  
492 build-out requirements on a franchise holder.

493 C. Customer service requirements. Notwithstanding any other provision of law, the  
494 franchise holder shall comply with customer service requirements set forth at 47 C.F.R.  
495 §76.309(c) until there are two or more providers, including the holder but excluding direct-to-  
496 home satellite service, offering cable service within the jurisdiction of the relevant municipality  
497 where the holder has been authorized to serve.

498 10. Enforcement.

499 The exclusive remedy for enforcing the provisions of this chapter shall be an action in a court of  
500 competent jurisdiction brought by either the municipality or the Massachusetts Attorney  
501 General on behalf of the Division. At least 60 days before bringing such an action, the  
502 municipality or Attorney General shall serve the franchise holder with a notice setting out the  
503 alleged violation and stating that an action may be brought unless the holder corrects the alleged  
504 violation or enters into a binding agreement to correct the violation within the 60-day notice  
505 period. The notice shall contain a sufficiently detailed description of the alleged violation to  
506 enable the franchise holder make a specific response.

507 11. Applicability of other laws.

508 The provisions of this chapter are intended to be consistent with the Federal Cable Act, 47  
509 U.S.C. §521, et. seq., and nothing in this chapter shall be interpreted to prevent a voice provider,  
510 cable operator or municipality from seeking clarification of its rights and obligations under  
511 federal law. In the event that any cable operator obtains relief through judicial, administrative,  
512 or executive action from any obligation imposed under this chapter, or from any obligation in a  
513 franchise agreement that gives rise to an obligation of another cable operator under this chapter,  
514 all other cable operators shall be deemed to be relieved of their obligations under this chapter  
515 within the same geographic area and to the same extent.

516        12. Severability.

517        If any provision of this chapter or its application to any person or circumstance is held  
518        invalid, this invalidity does not affect other provisions or applications of this chapter that can be  
519        given effect without the invalid provision or application, and to this end the provisions of this  
520        chapter are declared to be severable.

521        13. Effective Date. This act shall take effect immediately upon passage.